

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-293-C – ORDER NO. 2004-445
OCTOBER 18, 2004

IN RE: Savannah Valley Cablevision, Inc.,)	
)	ORDER HOLDING
Complainant/Petitioner,)	MOTION TO DISMISS IN
)	ABEYANCE
vs.)	
)	
West Carolina Rural Telephone Cooperative,)	
Inc. and West Carolina Communications,)	
LLC,)	
)	
Respondents.)	
_____)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) on a Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure (“SCRCP”) and filed by West Carolina Rural Telephone Cooperative, Inc. (“WCRTC”) and West Carolina Communications, LLC (“WCC”) (collectively, the “Respondents”). By their Motion, Respondents request that the Commission dismiss the Complaint filed by Savannah Valley Cablevision, Inc. (“SVC”) for failure to state facts sufficient to constitute a cause of action. Respondents state that as required by Rule 12(b)(6), SCRCP, they raised this defense in their Answer to the Complaint. Respondents further allege that subsequent pleadings including the prefiled testimony of SVC in this matter establish that SVC has no facts upon which to base its

Complaint and that SVC seeks relief to which it is not entitled and which is outside the authority of the Commission to address. The Respondents state that they are under no legal duty to file affiliate contracts in the absence of a Commission request. Respondents rely upon S.C. Code Ann. Section 58-9-320 for this argument.

Respondents also assert that the allegations made by SVC in this matter do not rise to the level of a valid complaint as SVC has offered only allegations and hypothetical situations. According to the Respondents, SVC's allegations have been alleged under the guise of concern over affiliated transactions between a regulated entity and its affiliate, but in reality SVC's action is a clear attempt to delay service by a potential competitor for non-regulated digital entertainment services. Because SVC has not stated a claim upon which relief may be granted, Respondents request that the Commission dismiss SVC's Complaint and close the instant docket.

SVC filed a Return to the Respondent's Motion to Dismiss. In its Return, SVC states that the Motion to Dismiss must be denied because SVC has a right to seek redress from the Commission. SVC asserts that the Commission's Rules and Regulations allow a person to complain regarding anything done or omitted to be done by any person under the statutory jurisdiction of the Commission in contravention of any statute, rule, regulation or order administered or issued by the Commission. SVC asserts that the issues in the Complaint raise questions as to whether the contractual relationship between WCRTC and its affiliate, WCC, contravene any statute, rule, or regulation of the Commission. Further, SVC asserts that as a customer of WCRTC and a competitor of WCC it has an interest in whether WCRTC is subsidizing the operations of WCC. SVC

further asserts that under S.C. Code Ann. Section 58-9-320 the Commission is obligated to ensure that WCRTC does not unreasonably discriminate in favor of its affiliate, WCC. SVC contends that contracts between WCRTC and WCC should be filed with the Commission for review and approval prior to becoming effective. SVC states that it is asking the Commission to require a regulated monopoly utility to comply with the statutory requirements by filing its contracts so that Staff can review those contracts to determine whether WCRTC's dealings with WCC are proper and in the public interest. SVC asserts as premise for its Complaint that S.C. Code Section 58-9-250 requires the Commission to prevent WCRTC from discriminating among its customers. SVC further contends that the Respondents' assertion that the Commission has no authority to grant relief is not true. According to SVC, the Commission has a statutory obligation to oversee WCRTC to ensure that it does not discriminate in favor of its affiliate by improper cross-subsidization using unapproved and unfiled contracts. SVC also alleges the Motion to Dismiss is improper because it relies in part on the prefiled testimony submitted by SVC. According to SVC's argument, a proper motion under Rule 12(b)(6), SCRPC, is based only on the complaint. SVC asserts that Respondents have not attempted to meet the burden of Rule 56, SCRPC, which would be required as they have cited matters beyond the allegations of the Complaint.

The Commission has considered the Motion to Dismiss filed by the Respondent's and the Reply filed by SVC and determines that the Motion to Dismiss should be held in abeyance at this time.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)